

26

Office - Supreme Court, U. S.

FILED

APR 23 1945

CHARLES ELMORE DUFFLEY  
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

✓  
No. 1192

CARRIE A. LOUNT, WIDOW; H. L. MOSHER, AS  
ATTORNEY IN FACT FOR CARRIE A. LOUNT,

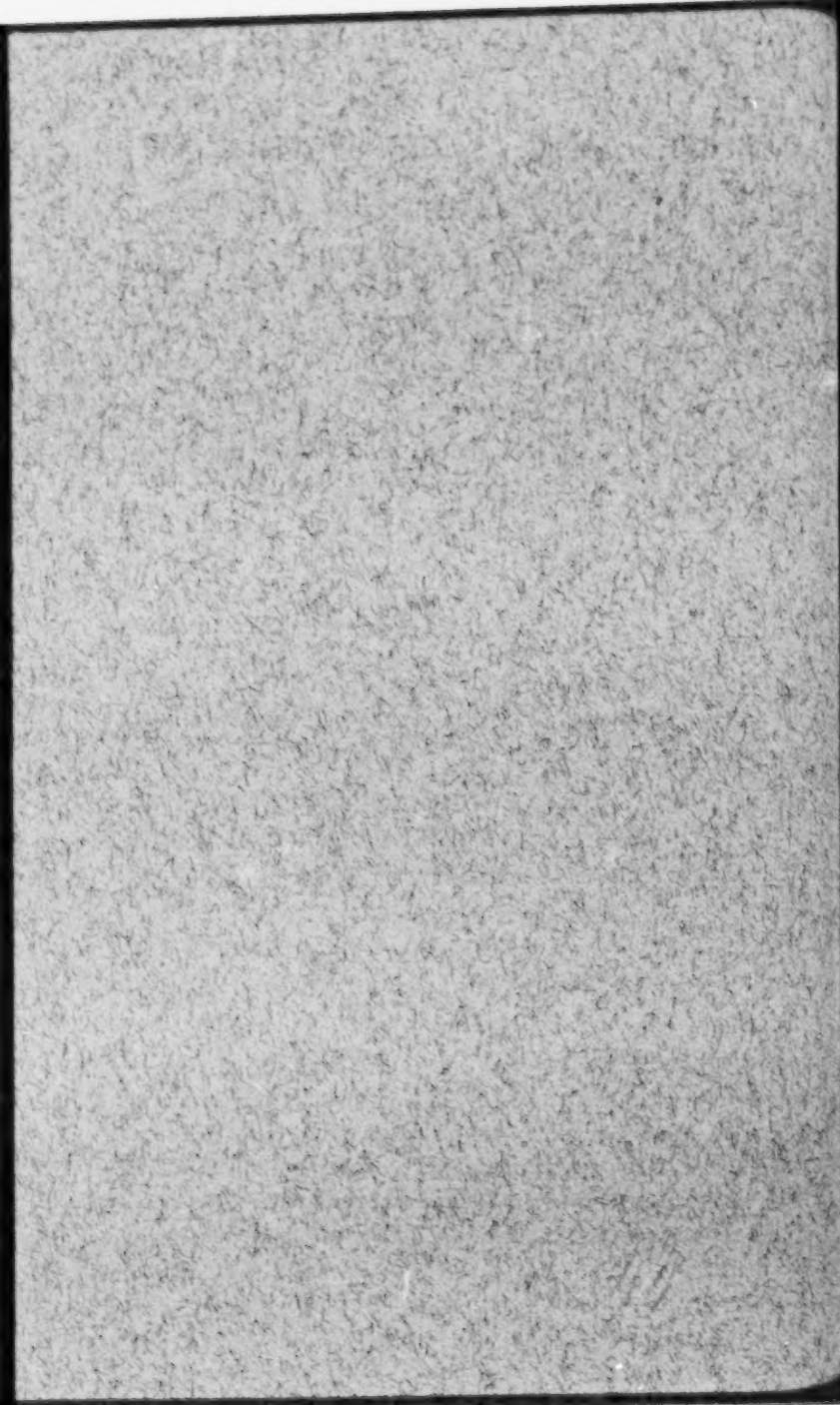
*Petitioners,*

*vs.*

HALBERT H. HINER; NELL H. HINER, HIS WIFE;  
WILLIAM TELL; AND LUCILLE TELL, HIS WIFE;  
DOING BUSINESS AS CO-PARTNERS UNDER THE FIRM NAME  
OF THE PHOENIX AUTO TOP COMPANY

PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ARIZONA

THOMAS O. MARLAR,  
*Counsel for Petitioner.*



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

---

No. 1192

---

CARRIE A. LOUNT, WIDOW; H. L. MOSHER, AS

ATTORNEY IN FACT FOR CARRIE A. LOUNT,

vs.

*Petitioners,*

HALBERT H. HINER; NELL H. HINER, HIS WIFE;  
WILLIAM TELL; AND LUCILLE TELL, HIS WIFE;  
DOING BUSINESS AS CO-PARTNERS UNDER THE FIRM NAME  
OF THE PHOENIX AUTO TOP COMPANY,

*Respondents*

---

**PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF ARIZONA**

---

*To the Honorable Harlan F. Stone, Chief Justice, and to  
the Honorable Associate Justices of the Supreme Court  
of the United States, Greeting:*

Your Petitioners, Carrie A. Lount and H. L. Mosher, respectfully pray for a Writ of Certiorari to the Supreme Court of the State of Arizona that it certify up to the Supreme Court of the United States for review of all proceedings and records supporting, and relevant to, that order of the Supreme Court of the State of Arizona entered

November 27, 1944; which order dismissed the appeal of these petitioners without cause, and without giving any reason for the dismissal; and that order of December 18, 1944, which denied the Petition for a Rehearing of the Motion, and Order of Dismissal, and denied to Carrie A. Lount the right of filing a Bond on Appeal in the Supreme Court accorded to her by Statute, after the Court Order of the Lower Court of September 11, 1944 had disapproved of the Affidavit of Inability of Carrie A. Lount to give a Bond on Appeal without according to her the Statutory Right of not less than Ten (10) days in which to procure such Bond. Carrie A. Lount, by these denials, and H. L. Mosher, by the Refusal to her, of her Lawful Right to bring an action in a Forcible Detainer suit, were both denied

“The Equal Protection of the Laws and Carrie A. Lount’s property taken without Due Process of Law.”

The Supreme Court of the State of Arizona is the highest court in the state, and the court of Last Resort.

### **Statement of Matter Involved**

The matter involved in this Petition for Certiorari began with a complaint, superceded by an amended complaint, under an Arizona statute, found in Arizona Code Annotated 1939, 27-1215, on page 527, of Volume 2:

“27-1215. Summary proceedings by landlord.—(a) Whenever a tenant shall neglect or refuse to pay his rent when due and in arrears for five (5) days, or whenever any tenant shall violate any of the provisions of his lease, the LANDLORD or person to whom said rent is due,

OR HIS AGENT,

may re-enter and take possession, or, without any formal demand or re-entry,

## COMMENCE AN ACTION

for the recovery of the possession of said premises.”  
(Small capitals ours.)

Carrie A. Lount (R. 3) set forth that she was the landlord, and the owner of the leased premises. She sued for \$240.00 delinquent rent, and asked for possession. She verified her complaint (R. 4). The respondents filed a general denial, but neither verified it nor furnished any evidence in support of their general denial or their possession for very many years under, and as tenants, of Carrie A. Lount (R. 2), who verified that she was the owner of the property and the landlord of the respondents (R. 4). The respondents moved the court for an order dismissing H. L. Mosher, as Attorney in Fact (R. 1). The lower court, thoughtlessly, did so (R. 12) but immediately revoked the order (R. 12). There was no stenographer present, therefore no Reporter's Transcript in the record, a violation of Arizona Law, which denied to Lount and Mosher the EQUAL PROTECTION OF THE LAW and DUE PROCESS OF LAW. There are no Exhibits in the Record and no Testimony in support of the Judgment (R. 5) which was neither settled nor approved, in writing, by the judge (R. 5-6), as required by Rule 58, of the Rules of Civil Procedure, effective January 1, 1940, which are statutory in Arizona. There were laws in Arizona that should have protected Carrie A. Lount in her ownership of her land but she was denied THE EQUAL PROTECTION OF THOSE LAWS and her land was taken from her WITHOUT DUE PROCESS OF LAW, of a value of \$15,000.00 as found by the two Appraisers who pass upon the value of realty for all the Phoenix Banks and Savings Institutions and Financial Concerns who make big loans wherein the value of realty is the basis of such loans. These appraisers found that the structure rented to the respondents rested

across the dividing line between the so-called Lots One (1) and Two (2) in Block 13 of Churchill Addition. Therefore they were in possession of 100 feet frontage by 140 feet in depth. They found the value of the rented structure as negligible so merely appraised the land, as follows:

“TO WHOM IT MAY CONCERN:

Being requested to appraise the following described property: Lots 1 and 2, Block 13, CHURCHILL ADDITION, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona. 2 Lots—100 X 140.

I place a value on above property of FIFTEEN THOUSAND (\$15,000.00) Dollars.

Respectfully submitted,

PETER BLOCK,  
*Peter Block, Appraiser.*”

“TO WHOM IT MAY CONCERN:

Being requested to appraise the following described property:

Lots 1 and 2, Block 13, CHURCHILL ADDITION, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona.

I place a value on above property of FIFTEEN THOUSAND (\$15,000.00) Dollars.

Respectfully submitted,

J. M. KELLOGG,  
*J. M. Kellogg, Appraiser. K-m.*”

The originals of these two appraisals are in the possession of the Clerk of the Supreme Court of the United States having been mailed to him for the information of this court as showing that the small amount of \$240.00 which was the subject matter of the complaint did not represent the value of the land that had been taken from Carrie A. Lount, the owner, and landlord.

A Motion was filed by H. L. Mosher, In Person, to set aside the Judgment, in due time. This was served on Harry

J. Valentine, Attorney for Carrie A. Lount, and on Charles L. Strauss, Attorney for the Defendants (Respondents) (R. 6). By order of the Superior Court H. L. Mosher was in full standing as one of the Plaintiffs at that time (R. 12). As no denial was ever made by the court of the Motion to Set Aside the Judgment and no Hearing was ever held thereupon as required by Rule VII, of the Supplemental Rules, Sections 1, 3, 4, and Section 5, which requires Division No. 1 to be called at 1:30 P. M. on each and every Monday (Section 1), this Motion to Set Aside the Judgment has been continuously in force, and effect, since its filing date, July 5, 1944, and is now, at the date of docketing this Petition for a Writ of Certiorari, in full force and effect. The Points Relied Upon (R. 9-10) are herein adopted, and made a part of the "Matters Involved" in this Petition as fully, and completely, as though copied herein.

August 28, 1944—The Notice of Appeal to the Supreme Court filed. This Notice was signed by Carrie A. Lount and H. L. Mosher, themselves. At this date H. L. Mosher was in full, and legal, standing, as one of the Plaintiffs in this Forcible Detainer.

August 28, 1944—An Affidavit of Inability to give Bond on Appeal; signed, and sworn to, by Carrie A. Lount and H. L. Mosher; was filed (R. 8).

August 31, 1944—Charles L. Strauss filed a "Demand for Proof of Facts Stated in Affidavit" (R. 9) of said "party" but did not state whether he wanted the proof from Carrie A. Lount or H. L. Mosher (R. 9). The word "*party*" was underscored to show that only one party was required to give proof (R. 9). Charles L. Strauss signed himself, for some reason of his own, as being the Attorney for the Plaintiffs. The word "*Plaintiffs*" was underscored in the Abstract of Record to call attention of the Supreme Court to his false claim.

September 11, 1944—The Court ordered the Inability of Mosher approved and disapproved as to Lount (R. 12). The court did not allow Carrie A. Lount any time in which to file an Appeal Bond as required by Rule IX, of Civil Procedure, Section (e). May be filed:

“\* \* \* at such time before the action is so docketed  
AS MAY BE FIXED BY THE SUPERIOR COURT. \* \* \*”

R. 34 shows no time was allowed by the court.

October 5, 1944—Record in No. 53277, *Lount and Mosher v. Hiner, et al.*, Transmitted to the State Supreme Court.

November 3, 1944—Abstract of Record served. (Saturday.)

November 4, 1944—Record on Appeal filed in the Supreme Court and the \$25.00 Filing Fee paid and case numbered: No. 4774.

November 4, 1944—Abstract of Record due in Supreme Court but as that was Sunday it could not be filed.

November 5, 1944—Abstract of Record taken down to the Clerk of the Supreme Court about 3:00 P. M. but the Clerk had been compelled to go on an errand and the Deputy Clerk said it could only be entered by the regular clerk who would do it the next day.

November 6, 1944—Appellants' Abstract of Record filed in the Office of the Clerk of the Supreme Court.

November 9, 1944—Appellees filed a Motion to Dismiss (R. 13).

November 27, 1944—The Supreme Court entered an Order Dismissing the Appeal. This was Monday, the regular Law and Motion day.

December 3, 1944—The Opening Brief would have been due as it was 30 days from the Serving of the Abstract of Record upon Appellees, had the case not have been previously dismissed.

### Statement of Jurisdiction

The Supreme Court of the United States has jurisdiction to review all proceedings brought in the County Courts and then appealed to the Supreme Court of the State of Arizona; which is the highest court in the state, and the Court of Last Resort; subsequent to June 19, 1944, when the instant case was filed.

The jurisdiction of the Supreme Court of the United States is invoked by:

United States Code Annotated, Title 28, Section 344(b), being Judicial Code Section 237, Amended. Also Sections 240 and 347.

Arizona Code Annotated 1939, Volume 1, Page 123; the Constitution of Arizona, Article VI, Section 1; and at page 125, of said Code; and the Constitution of Arizona, Article VI, Section 4.

Judiciary Act of 1789, as amended by Acts of January 31, and April 26, 1928.

Article 14, Amendments to the United States Constitution, as follows:

“ \* \* \* Nor shall any state deprive any person of \* \* \* property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

The Superior Court of Maricopa County, aided and abetted by the Supreme Court of the State of Arizona, without due process of law, and without any process of law, arbitrarily took from Carrie A. Lount land of an appraised value of \$15,000.00 as shown in the Statement of Matter involved, (Page 2, of this Petition), exclusive of interest and costs.

An Attorney in Fact is merely an AGENT of record. The statute, quoted in full, (Page 2, of this Petition) gave to H. L. Mosher the statutory right to bring an action. This

was recognized by the lower court (R. 12), and who entered an order that she could appeal without bonds. The attorney for appellees, in his Motion to Dismiss, states that she has no right of appeal. No ruling was made by the Supreme Court reversing the ruling of the Superior Court that she could appeal without bonds, and giving her full legal, and statutory, rights of an appellant (R. 12). The attorney for the appellees assumed the position of a Judge and Jury and ruled that H. L. Mosher could not appeal. The Supreme Court recognized the Self Constituted Court of the Attorney for the Appellees and confirmed its Ruling, or Order, and, for the first time in the World's Jurisprudence, was there created, and recognized in the Court of Last Resort, of a State in the Union:

“THE COURT OF THE APPELLEES”

Therefore, Carrie A. Lount was deprived of the right of all civilized nations of the World to have an Attorney in Fact and an agent. Likewise, H. L. Mosher was deprived of the right to be an Attorney in Fact and an agent. Of just what Federal and Constitutional rights these two petitioners have been deprived they do not know, but they have certainly been deprived of universal, and sacred, rights.

The Supreme Court of Arizona upheld, by dismissing the appeal, a judgment of the lower court that was neither settled, nor approved, as required by Rule 58, of the Rules of Civil Procedure:

“\* \* \* filing with the clerk of a form of judgment settled and approved, in writing, by the judge \* \* \* constitutes the entry \* \* \* the judgment is not effective before such entry.”

The Judgment shows on its face that it was never settled, nor approved (R. 5-6). Likewise that H. L. Mosher was never served with a copy of the judgment as required by

law as she represented herself throughout, and at the trial, as shown (R. 6 and R. 11).

The Supreme Court of the United States certainly has jurisdiction over a case where land valued at \$15,000.00 is turned over to tenants and possession refused to the owner, Carrie A. Lount, without any evidence, or filed exhibits, to show that she is not entitled to the possession of the land, and to the rental therefrom. Such is opposed to PUBLIC POLICY and petitioners do not find one authority cited in any state in the Union to uphold such an iniquity.

Carrie A. Lount was denied of her right, by the lower court, of time in which to file a bond. The Abstract of Record was filed in the Supreme Court November 6, 1944, immediately after the appeal was filed, and within the legal, and statutory, time. The Motion to dismiss was filed three (3) days later, November 9, 1944. Carrie A. Lount was given absolutely no time, by the Supreme Court, to make application for permission to file a bond. Appellees made the statement in their Motion to Dismiss Appeal, that:

“1. That the appellant, Carrie A. Lount, has failed and refused to file a cost bond as required by law in order to perfect her appeal.”

That is an absolute falsehood. No where in the Record is such refusal, or neglect, shown, but it is shown that the lower court did not give her any time in which to file a bond after it had disapproved of her Affidavit of Inability to give a bond. There is nothing in the Record to show the court that her affidavit was not entitled to consideration, and allowance. The three (3) days time she had in the Supreme Court was entirely too short to procure a bond and then make application for permission to file the bond. The opposition would have had five (5) days in which to oppose it before it could be granted. The Motion to Dismiss, with its falsities of the bond, and that H. L. Mosher had no right to bring an action as Attorney in Fact, and its ignoring of the statute

that gave her that right, had to be acted upon before Lount could make any application to file a bond.

The Petition for a Rehearing, after the illegal dismissal, was the first opportunity that Carrie A. Lount had in which to make an application for leave to file a bond on appeal and she did so.

December 12, 1944—The Petition for Rehearing was filed by Lount and Mosher in the Supreme Court. It contained an Application to File a Bond made at the first opportunity.

The Petition for Rehearing was denied, but no notice was taken of the Application of Carrie A. Lount, made at the first opportunity.

Regarding the application to file an appeal bond the Petition for Rehearing speaks for itself (R. 16).

As shown in this statement of jurisdiction Arizona has laws and Statutes that would have protected Carrie A. Lount and H. L. Mosher in their property and legal rights but they were

DENIED THE EQUAL PROTECTION OF THE LAW  
and the

PROPERTY TAKEN WITHOUT DUE PROCESS OF LAW

### **Questions Presented**

1. Can any court refuse to restore land to the owner and landlord when the rental price is eight (8) months in arrears with no proof, or evidence, of any kind, that the person from whom they rented many years before, and to whom they have regularly paid their rental sums for many, many, years, is no longer their landlord and the owner of the leased premises?

2. Can any court refuse to permit an agent to be a party plaintiff when a state statute expressly provides that such agent can re-enter or commence an action for the recovery of the possession of said premises?

3. Can any court violate, and ignore, the Statutes enacted by the legislature of the state to give equal protection to all?

4. Can any lower court refuse to obey a statute that requires it to set forth the time allotted for procuring an appeal bond when it has disapproved an affidavit of inability to give such bond?

5. Can a Supreme Court dismiss an appeal when forbidden by statute?

6. Can the Supreme Court dismiss an appellant who comes into court with full legal standing from the lower court, and especially protected by a statute enacted by the legislature?

7. Can the court violate its own Rules of Procedure which have been made the laws of the state?

### **Reasons for Allowance of Writ**

First Reason—The Superior Court of Maricopa County, Arizona, aided and abetted by the Supreme Court of the State, deprived Carrie A. Lount of land of a value of \$15,000.00, exclusive of interest and costs, without DUE PROCESS OF LAW AND WITHOUT COMPENSATION.

Second Reason—The Superior, and Supreme, Courts, denied to these petitioners THE EQUAL PROTECTION OF THE LAW ACCORDED TO OTHERS SIMILARLY SITUATED.

Third Reason—Public Policy was abrogated when the Superior and Supreme Courts of Arizona flouted their own Rules of Civil Procedure, and the Statutes of the State, and sanctioned the taking of the land of Carrie A. Lount, and denied to her its possession, to the enrichment of the respondents, who were merely tenants, and regardless of illegalities.

**BRIEF**

There was no OPINION filed by the State Supreme Court which merely dismissed the appeal at the request of the attorney for the appellees made three (3) days after the filing of the Abstract of Record which said request contained statements shown to be false by the face of the Record and citing statutes, and authorities, that had no bearing on the case at bar which was a Forcible Detainer case filed under especial statutes enacted therefor.

The statute that authorized the bringing of the instant case is found in Arizona Code Annotated 1939, 27-1215, at page 527, in Volume 2, and is quoted in full, in this petition, at the beginning of the "Statement of matter involved" (Page 2). This statute clearly sets forth the right of the Attorney in Fact, who is a recorded agent, in her position as a plaintiff. This was upheld by the Lower Court, which sanctioned her right to appeal without bonds. The Supreme Court never ruled upon this right but accepted the decision of appellees that Section 21-1701 applied although that section has no connection with the case at bar and dismissed the Attorney in Fact.

The Supreme Court accepted the decision of the appellees that

"1. That the appellant, Carrie A. Lount, has failed and refused to file a cost bond \* \* \*" and that the filing of a cost bond is jurisdictional.

The face of the record shows that she was given no time, or opportunity, to file a cost bond. To be sure the bond is jurisdictional but likewise so are the statutes set forth in the Petition for Rehearing (R. 16). Paragraph 3675, of R. C. of A. 1928, quoted in full in the Petition, forbids the court to dismiss the appeal and requires the court to prescribe the time and terms upon which the bond shall

be filed. This the court failed to do, and completely ignored the Application of Carrie A. Lount to file a bond made at the first opportunity.

### **Errors Based on Questions Presented**

1. It was error for the Lower Court to refuse possession of the premises to the verified owner and landlord, Carrie A. Lount.
2. It was error for the Supreme Court to dismiss the Attorney in Fact who appealed with the full support of the Lower Court and of a Statute enacted especially for permitting her to bring an action for her principal.
3. It was error for the Lower Court and the Supreme Court to ignore statutes enacted to give equal protection to all.
4. It was error for the Lower Court to refuse to obey a statute that required it to give Carrie A. Lount a prescribed time in which to file a bond after it had disapproved her affidavit of Inability.
5. It was error for the Supreme Court to dismiss the appeal of Carrie A. Lount when the Revised Code of Arizona 1928 Paragraph 3675, forbid the dismissal and required it to prescribe the time and terms of a bond on appeal.
6. It was error for the Supreme Court to dismiss H. L. Mosher when she came into court in full legal standing and sanctioned by the Lower Court and protected by Arizona Code Annotated 1939, 27-1215.
7. It was error for the Lower Court to sign a judgment of which he did not approve and which he did not settle as required by Rule 58 of Civil Procedure.

## Argument

When the whole record of this case, the Questions Presented, and the Assignments of Error, show a complete disobedience of the law and a disregard of the Rules of Procedure it would be superfluous to make an extended argument. For any court to say that tenants who occupied property and refused to either pay their rent or yield possession of the premises to the verified landlord and owner of the property and give them the continued possession thereof is quite beyond argument. There is no evidence, nor exhibits, in the record to support that ruling of the court.

These tenants had been paying their rental sum for a structure that the appraisers obviously did not consider of any value as they placed no value upon the structure which was located upon the dividing line between Lots 1, and 2, Block 13, Churchill Addition.

Therefore the courts of Arizona have made a literal present of these two lots to the defaulting tenants who can now occupy them free of expense so far as the record shows.

Real estate, as an abstract proposition, has no more value than a strip of wind blown sand in the Desert of Gobi.

It is the convenience of occupation; the use of the soil; the profits of the soil's production; the increase of value for a future sale; the emoluments derived from its possession; this is what the Arizona courts have made an outright gift of to these defaulting tenants; and this it is that creates the value of land.

This action of the Arizona courts is no matter of purely local concern. It is a matter that reaches out to all peoples. It is a matter of extended interest when the courts of Arizona take \$15,000.00 in its fists and present it to the irresponsible tenants.

WHEREFORE, petitioners pray that the Supreme Court of the United States grants them a Writ of Certiorari to the Supreme Court of the State of Arizona and that its acts be reversed, revoked, and annulled, and that possession of the property involved be restored to the owner, Carrie A. Lount, and she be given the rental due, and her costs, that are proper and legal, and for such other, and further, relief, to which these petitioners may be entitled, and to which this High Court may deem mete and proper, and they will forever pray.

Carrie A. Lount and H. L. Mosher, Petitioners.

Respectfully Submitted by

THOMAS O. MARLAR,  
*Attorney for Petitioners.*

(8029)